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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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09/281,813

03/31/1999

STEPHEN PALM

P17243

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06/15/2004

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EXAMINER

NGUYEN, DUNG X

ART UNIT

PAPER NUMBER

2631

DATE MAILED: 06/15/2004

41

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/281,813

Applicant(s)

PALM, STEPHEN

Examiner

Dung X Nguyen

Art Unit

2631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,4,5,9,10,42 and 43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 39.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Response to Arguments

1. Applicant's arguments filed on May 20, 2004, have been fully considered but are moot in new ground(s) of rejection(s). Claims 1, 3, 6 – 8, and 11 – 41 have previously been cancelled. Claims 42 and 43 have been added.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 2, 4, 9, 42, and 43 are rejected** under 35 U.S.C. 103(a) as being unpatentable over McHale et al. (US patent # 5,852,655), and further in view of Dent (US patent # 5,844,894).

Regarding claim 2, McHale et al discloses that a xDSL systems can be implemented (figures 1, 3, 4, and abstract), comprising:

- A negotiation data transmitter, associated with an initiating communication device (see transceiver (19) of xDSL transceiver unit (16) of figure 1), that transmits at least one carrier including first negotiation bits representing dissimilar xDSL modulation transmission protocol capabilities to a responding communication device (see also figure 3);
- A negotiation data receiver, associated with the initiating communication device, that receives at least one carrier including second negotiation communication bits representing dissimilar xDSL modulation transmission protocol capabilities of the

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responding device, in response to the transmitted at least one carrier (see figure 4);
and

- A control block (block 18 of figure 1) corresponding to a selector that selects appropriate xDSL modulation transmission protocol in accordance with the responding communication device to establish a communication channel, wherein the transmitted at least one carrier contains data, the transmission of the negotiation information bits and the reception of the second negotiation information bits occurring prior to an initialization procedure to establish the communication link.

McHale et al. differs from the instant claimed invention that it does not state that in the control block (block 18 of figure 1) transmits at least one carrier contains data related to a useable frequency spectrum carrier allocation.

However, Dent teaches that the radiotelephone (block 300 of figure 3) transmits at least one carrier contains data related to a useable frequency spectrum carrier allocation (abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to implement Dent into McHale et al. to provide that control block (block 18 of figure 1) transmits at least one carrier contains data related to a useable frequency spectrum carrier allocation for improving the communication system.

Regarding claims 4, the limitations are analyzed in the same manner set forth as claim 2.

Regarding claims 9, the limitations are analyzed in the same manner set forth as claim 2.

Regarding claims 42, the limitations are analyzed in the same manner set forth as claim 2.

Regarding claims 43, the limitations are analyzed in the same manner set forth as claim 2.

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4. **Claims 5 and 10 are rejected** under 35 U.S.C. 103(a) as being unpatentable over McHale et al. (US patent # 5,852,655), Dent (US patent # 5,844,894), and further in view of Gerszberg et al. (US patent # 6,424,646 B1).

Regarding claim 5, as followed by the limitations analyzed in claim 4, McHale et al. and Dent differ from the instant claimed invention that they do not show that wherein transmission characteristics of the transmitted at least one carrier is re-configurable during a transmission operation in order to minimize interference with the neighboring receiving system.

However, Gerszberg et al. discloses that wherein transmission characteristics of the transmitted at least one carrier is re-configurable during a transmission operation in order to minimize interference with the neighboring receiving systems (column 10, lines 23 – 32, column 13, lines 47 – 51).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to combine McHale et al., Dent, and Gerszberg et al. to provide that wherein transmission characteristics of the transmitted at least one carrier is re-configurable during a transmission operation in order to minimize interference with the neighboring receiving system for improving the communication system.

Regarding claims 10, the limitations are analyzed in the same manner set forth as claim 5.

Contact Information

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung X. Nguyen whose telephone number is (703) 305-4892. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Ghayour Mohammad H can be reached on (703) 306-3034. The fax number for this group is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305- 3800.

DXN

June 04, 2004

Mr. Corriell
JEAN B. CORRIELUS
PRIMARY EXAMINER
6/9/04